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CURRENT TOPICS

Sir Stanley Pott

BY the death on 25th January, at the age of 80, of Sir STANLEY POTT the profession loses one of its most distinguished members and servants. As a member of the Council of The Law Society from 1923 until his retirement in 1947, and as President for the year 1942–43, Sir Stanley Pott devoted himself to furthering the best interests of his profession. In 1931 he became a member of the Disciplinary Committee. Admitted in 1896, he practised in the City of London and became senior partner of the firm of Holmes, Son and Pott. He was a Past Master of the Worshipful Company of Solicitors of the City of London, and had for many years taken an active interest in the work of the Foundling Hospital, of which he was latterly treasurer.

The Law Society's Special General Meeting

THE President's address to members of The Law Society at the Special General Meeting on 26th January, of which a report will be found at p. 73 of this issue, records much solid endeavour by the Council and its committees during the past half-year. Before asking the Press to withdraw to enable the meeting to discuss more freely "a domestic matter of some importance"—and here it may be noted that the published part of the President's address makes no reference to the burning topic of remuneration—Sir LEONARD HOLMES reviewed the work done in preparing and tendering evidence to the various committees now investigating such diverse matters as retirement benefits in relation to income tax, the law of intestacy, and the law affecting charities; and it need hardly be said that the Society's evidence before the Supreme Court Committee has been continued by the submission of four further memoranda. The statistics given by the President concerning applications for legal aid during the first three months are of much interest, and it is perhaps worth while to compare the number of applications for civil aid certificates during the first quarter (20,251) with the number of solicitors now enrolled on the panels, which has risen to the impressive total of 8,900. Allowing for an initial rush of applications and the rejection of a proportion, one gains a general impression of the number of legal aid cases which the average solicitor on the panels may be asked to undertake within the present scope of the scheme. Some comparatively minor amendments of the Legal Aid Scheme and Regulations are, it seems, to be made shortly, but on the whole it is clear that the administrative arrangements are working well.

Rent Tribunals: Right to Withdraw

BOTH the Furnished Houses (Rent Control) Act, 1946, and the Landlord and Tenant (Rent Control) Act, 1949, provide for the determination, by rent tribunals, of reasonable rents of certain premises; in the one case on the reference of the contract by either party or by the local authority, in the other on the application of either party only. The 1946 Act directs the tribunal to consider the reference unless before they have entered into such consideration it is withdrawn

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(s. 2 (2)); there is no counterpart to this in the 1949 Act, and in *R.* v. *Hampstead and St. Pancras Rent Tribunal, ex parte Goodman* [1951] 1 All E.R. 170 (in which six counsel, including H.M. Attorney-General, were engaged) a Divisional Court held that a tribunal had no right to hear an application which had been withdrawn, by consent, after it had been made but before the hearing. The words "on any such application the tribunal shall determine" in s. 1 (1) of the 1949 Act meant "any such application made and not withdrawn." LORD GODDARD, C.J., intimated his view that withdrawal might occur at any time before the giving of a decision. We might mention that our "Landlord and Tenant Notebook," discussing this very question on 4th November, 1950 (94 SOL. J. 701–702), suggested that neither statute negatived the existence of an inherent right to withdraw, which was limited rather than created by that of 1946; if an application under the 1949 Act were withdrawn, there was nothing that the tribunal could get its teeth into. The new decision is welcome as, in effect, reaffirming the rights of litigants to compose their differences.

Promise not to Seek Possession Order

THE effect of *Central London Property Trust, Ltd.* v. *High Trees House, Ltd.* [1947] K.B. 130 is still unfolding. The enforceability of promises or assurances made without consideration but acted upon by the persons to whom they are made has given lawyers much to think about. A bold contention was put forward by counsel for the defendant in a possession case, on the ground of hardship, at Edmonton County Court on 19th January that, as a result of an assurance by his landlord that he would not return, the defendant had moved from a flat where he had security of tenure and altered his position for the worse by expending money on decorations of the house. His Honour Judge GRANVILLE SMITH held that on the facts there was nothing like a definite assurance by the plaintiff that he would not return, but only a pious expression of expectations as to the future. The learned judge consequently refrained from discussing the impact of the *High Trees* decision on possession cases.

Searches concerning Standard Rents

SOLICITORS acting for purchasers of houses the rateable value of which brings them within the scope of the Rent Restrictions Acts usually consider it their duty to requisition concerning the standard rent. Where they fail to do so, even if the purchase is not for investment purposes, the client may later be prejudiced by a tenant's claim for overpaid rent. Standard rents which have been determined with reference to a rent fixed since 1st September, 1939, may now be altered by rent tribunals, as a result of the Landlord and Tenant (Rent Control) Act, 1949, to accord with what they find to be a reasonable rent in each case. Counsel for the landlord, in a case before the Hammersmith Rent Tribunal, on 19th January, stated that it was not the practice of solicitors acting for purchasers of houses to requisition whether rents for any of the accommodation (furnished) had been fixed by a rent tribunal. The chairman said: "The sooner that solicitors and estate agents make this a general practice, the better they will serve their clients. They should take the elementary precaution of paying a shilling and searching at the local town hall." In the case before the tribunal, the chairman continued, the landlord had unknowingly committed a technical offence by charging a rent higher than that fixed before he bought the house. The maximum penalty for which he could be liable was a fine of £100 for every week that an overcharge was made.

Deserted Wives Bill

THE Deserted Wives Bill, of which the second reading was adjourned on a rejection of the closure on 26th January, was a private member's Bill, opposed by the Government. It was intended to ensure, according to Mrs. HILL, who moved the second reading, that a woman resident in a house of which her husband was the tenant should have the tenancy when she obtained a court order for desertion. Provision was made for the wife to have not only the chattels that she had paid for but also some essential articles for the use of her and her children. That marriage is a partnership is truer of the burdens than of the privileges of that relation, and there is a case for the application of the principles of partnership law to the dissolution of the relationship, if not to its continuance. It may well be that divorce courts should be given wider powers with regard to settlements of property which has been accumulated during the marriage, partly as a result of the efforts of the wife in service in the matrimonial home. The limited scope of the Bill, confined to rent controlled premises and to desertion orders in the magistrates' courts, made it incomplete.

Courts Martial Procedure

A GOVERNMENT White Paper entitled Courts Martial Procedure and Administration of Justice in the Armed Forces (Stationery Office, Cmd. 8141, price 9d.), containing their conclusions on the recommendations of the Army and Air Force Courts Martial Committee, set up in 1946, and the committee appointed to consider the administration of justice under the Naval Discipline Act, 1950, was published on 26th January. The Government rejects a proposal that all findings of guilt or innocence should be unanimous. Another which has not been accepted is that after being in close arrest for twenty-eight days without a court martial having been convened, an accused man shall have the right to petition the chief judge martial against continued detention. The right of appeal at present is through Service channels. The proposal in the report of the committee under the Naval Discipline Act, 1950, that court martial findings should be given as "guilty" or "not guilty," has been accepted, but the White Paper adds that "in exceptional cases the court should have discretion to add a rider that accused has been honourably acquitted of charge."

Offences Against Children

ADVICE by Ministers or Civil Service departments to magistrates as to the manner in which they should perform their judicial duties is not a healthy form of government, but so long as it is confined to advice and stops short of direction, it is, in theory, unexceptionable. In practice, too, as those who study sentences awarded in the magistrates' courts know, it can be a salutary method of informing justices as to the real weight of public sentiment. A Parliamentary answer on 26th January reminded magistrates that the public are unhappy about light sentences given to parents found guilty of cruelty to children and child neglect. The Under-Secretary for the Home Office, Mr. DE FREITAS, stated that it was not the duty of the Home Secretary to institute proceedings, or to give directions to the police or anyone else to institute them. About half the local authorities, he said, have designated officers to whom all cases of ill-treatment should be reported, as suggested in a departmental circular issued last year. While it was too early to say that this had been a complete success, the existence of these officers would go a long way to abolish unnecessary suffering because of delay.

Costs

THE LEGAL AID SCHEME—II

WE were considering in our last article on this subject the provisions of the Legal Aid and Advice Act, 1949, and the regulations made under it in relation to an assisting solicitor's costs, and we were dealing more particularly with the costs which the solicitor could recover from his client.

On the question of agency, para. 14 (11) of the General Regulations, 1950, provides that no solicitor or counsel acting for an assisted person shall entrust the conduct of any part of the case to any person save to a solicitor or counsel who is a member of an appropriate panel. This is clear enough, so that if a country solicitor's usual agent is not on the appropriate panel, then the country solicitor will have to employ another agent who is. The procedure of including the agent's bill of costs in the principal's bill as a disbursement, which, although not strictly correct, is often followed, cannot be adopted in an assisted case, for para. 2 (3) of Sched. III to the Legal Aid and Advice Act, 1949, in effect, provides that where a solicitor has acted as agent for another the amount of costs allowed to the principal shall include the agent's charges and disbursements, and the total amount allowed under Sched. III shall be divided between them in any manner that they may agree.

In this respect it is as well to remind ourselves that although R.S.C., Ord. 65, r. 27 (10), gives the taxing master discretion to make an allowance in respect of agency correspondence where the correspondence has been special and extensive, whilst items 201 and 202 of Appendix N of the Supreme Court Rules provide an allowance of one guinea as a term fee in agency cases, which incidentally is intended to cover the ordinary correspondence between principal and agent, no agency allowances will be made, either under item 202 or under Ord. 65, r. 27 (10), *supra*, where there is a common partner in the London and the country firms of solicitors acting respectively as agent and principal (see *Re Borough and Commercial Building Society* [1894] 1 Ch. 289).

Agency terms, of course, vary, but whether the agent gives to the principal one-third of the whole of his profit charges, or one-half of the profit charges for attendances and correspondence and one-third of the charges for copying, or whatever the financial arrangement may be between them, it will make no difference so far as an assisted case is concerned, for only one bill will be made up to include both the principal's and the agent's charges and disbursements, and whatever is allowed on taxation, they may, in Supreme Court cases, divide 85 per cent. of the profit charges between them in whatever proportions they may mutually arrange.

Whilst dealing with this question of agency it would be as well to notice para. 4 of the practice notes recently issued by The Law Society after consultation with the Supreme Court Taxing Office in relation to costs in assisted cases (94 SOL. J. 818). This note states that where it is necessary in an assisted case to employ a solicitor of another jurisdiction, that solicitor should be warned that the client is an assisted person, and that the instructing solicitor cannot accept liability for any charges in excess of those allowed on taxation. Thus, suppose that it is necessary to employ a solicitor in, say, Gibraltar for the purpose of obtaining evidence or information in connection with an assisted case, then the warning referred to above should be given.

In this respect, the assisting solicitor should bear in mind that he is not entitled to enter into any arrangement whereby the client agrees to pay any of the agent's or colonial solicitor's fees in excess of the amount allowed on taxation, for s. 2 (2) (*b*) of the Legal Aid and Advice Act, 1949, specifically provides that neither the solicitor nor counsel in an assisted case shall accept any payment in respect of the legal aid other than the payment directed to be made out of the legal aid fund. In connection with this aspect of the matter we have been asked whether there would be any objection to the assisted client paying direct to the colonial or foreign agent any part of the fees of the latter in excess of the amount allowed out of the legal aid fund. There does not appear to be any statutory objection to such a course, but manifestly it would be contrary to the spirit of the Act and the scheme, and in any case no solicitor would wish to be a party to such an agreement.

It is now necessary to consider the position with regard to costs where the solicitor for the assisted party is successful in securing a judgment or an order for costs against the opposite party in the action. In the first place, s. 1 (7) (*b*) of the Act provides that the rights conferred on a person receiving legal aid shall not affect the rights or liabilities of other parties to the proceedings, or the principles on which the discretion of any court or tribunal is normally exercised. In short, where one party in an action is an assisted person, and he secures judgment against the opposite party with costs, then the amount of the costs for which the unsuccessful party may be liable will not be affected by the fact that the successful party is an assisted person.

This particular point came up for consideration in the case of *Daley* v. *Diggers, Ltd., and Another* [1951] 1 All E.R. 116. In that case an action was brought by a person who afterwards applied for a civil aid certificate. He was successful in his action and obtained a judgment which involved the defendants in paying his costs. The judgment also provided that it was reasonable for the second defendants to be joined, and the court ordered that their costs should be paid direct to them by the first defendants.

The first defendants raised two contentions. In the first place, they contended that since the successful plaintiff was an assisted person then he should have no costs after the date when he was granted a civil aid certificate, or, in the alternative, that if he was entitled to costs then the costs should be taxed in accordance with Sched. III to the Act, and that 85 per cent. only of the amount thereof should be paid to the plaintiff, after the date on which the civil aid certificate was granted. Further, it was contended that since the successful plaintiff was an assisted person, then the costs payable to the second defendants, which were really costs awarded against the successful plaintiff, but in respect of which he stood to be indemnified by the first defendants, should be the subject of an inquiry as envisaged by para. 17 (1) of the General Regulations, 1950.

The learned judge found against the first defendants in both instances. In the first place, he held that the fact that the successful plaintiff was an assisted person must be wholly ignored in dealing with the costs to which he was entitled as against the unsuccessful first defendants in accordance with s. 1 (7) (*b*) of the Act, so that the successful plaintiff, although an assisted person, was entitled to recover the full amount of his party and party costs of the action. In the second place, he held that since the court had directed that the second defendants' costs should be paid to them direct by the first defendants, then the successful plaintiff was not concerned, and para. 17 (1) had no application in the particular circumstances of the case.

It should be noticed in this respect that where a party in an action is an assisted person, then the fact will be made known to the court and also to the other parties in the action,

for para. 15 (2) of the General Regulations states that where an assisted person becomes a party to proceedings, or a party to proceedings becomes an assisted person, his solicitor shall forthwith serve all parties to the proceedings with the appropriate notice. The costs of such notice, and of filing and serving the notice, will be costs in the cause (see para. 18 (4) of the General Regulations).

So far as the costs recoverable from the unsuccessful party in the proceedings are concerned, it will be noticed that para. 16 (1) of the General Regulations provides that all moneys payable to an assisted person " by virtue of any order or agreement made in proceedings to which his certificate relates " shall be paid to the solicitor to the assisted person, who is the only person capable of giving a good discharge. Paragraph 16 (2) of the Regulations then goes on to state that the solicitor shall pay any money received by him under the foregoing paragraph to The Law Society. Since the party and party costs in an action are moneys payable under an order or agreement in proceedings, then it is clear from the above that the amount of party and party costs received by the solicitor must be paid by him to The Law Society, and he, in due course, will receive out of the legal aid fund the amount allowed to him, that is, in Supreme Court matters, 85 per cent. of the costs taxed in accordance with the directions contained in Sched. III to the Act. Whatever the result of the action, then, the assisting solicitor cannot receive more for his services than 85 per cent. of the solicitor and client costs taxed on the basis that those costs are payable out of a common fund.

We will deal with the remaining matters of costs requiring consideration in respect of legal aid cases in our next article on this subject.

J. L. R. R.

A Conveyancer's Diary

DIPLOCK—A LAST WORD

" I THINK that the reasoning and conclusion of the Court of Appeal are unimpeachable," said Lord Simonds, in the course of his speech, with which the other members of the House expressed agreement, in *Re Diplock; Ministry of Health* v. *Simpson* (1950), 94 SOL. J. 777; 66 T.L.R. (Pt. 2), 1015. After that testimonial there would seem to be little point, at first sight, in discussing the recent decision of the House of Lords on this famous dispute, all the more so since the elaborate judgment of the late Master of the Rolls in this case ([1948] Ch. 465) was not only thoroughly analysed at the time of its delivery, but has since been used as the foundation for the rewriting of the relevant portions of any standard text-book on trusts which has been issued in a new edition since that time. But this is a superficial conclusion. The long interval between the hearing of the two appeals, in the Court of Appeal and in the House of Lords respectively in this case, has made it possible to see the principles on which the Court of Appeal rested its decision in perspective, and in one extremely important respect, at least, it can now be seen that the first branch of that decision is more limited in its application than was first, perhaps, thought.

It will be recalled that the plaintiffs put forward their claims against the various charitable institutions which had received benefits from the testator's residuary estate under two distinct heads, which were referred to throughout this litigation as the claims *in personam* and *in rem* respectively. The Court of Appeal held that the plaintiffs were entitled to succeed as against all the defendant institutions under the first head of claim, but against only some of the defendants on the claim *in rem*. Under this latter head the plaintiffs claimed to be entitled to trace the benefits received by the defendants from the estate into various forms of property into which the defendants had converted these sums, e.g., into buildings erected in part with Diplock money or investments purchased with such money. The advantage to the plaintiffs in pursuing this head of claim, even after achieving success in their claims *in personam*, lay in the fact that a payment somewhat analogous to interest could be, and was, ordered to be made in respect of the claims *in rem*, but no such payment could be ordered under the other head of claim.

The present appeal to the House of Lords was concerned only with the claim *in personam*, for this reason: The appeal arose out of the payment of Diplock money to the Westminster Hospital for the hospital's rebuilding fund, and this money was in fact paid into a separate banking account opened for the purpose of this fund, and subsequently wholly expended in the rebuilding of the hospital. The Court of Appeal held that in these circumstances the plaintiffs could not trace this money into the hospital's new building, and that their claim *in rem* against this particular defendant failed. The only question in this appeal, therefore, was whether the hospital was liable *in personam* to the plaintiffs or not. The addition of the Ministry of Health as a party to this appeal was due to the fact that under s. 6 of the National Health Service Act, 1946, the Ministry had become liable to pay any sum which the original defendant, the Westminster Hospital, might be ordered to pay to the plaintiffs.

The principle on which the plaintiffs were held to be entitled on their claim *in personam* was formulated by the Court of Appeal in the following terms: An unpaid or underpaid creditor, legatee or next of kin has an equity to recover from another moneys which, by the *devastavit* of a personal representative, have been improperly paid to that other person; and this equity is available whether the mistake under which the improper payment was made was a mistake of law or a mistake of fact, and whether the person improperly paid had or had not knowledge of the impropriety of the payment, but is subject to this qualification, that the person underpaid has to recover as much of his claim as he can from the personal representative whose wrongful act gave rise to the claim in the first instance, before he can take proceedings *in personam* against the person overpaid. The attack on this decision, as summarised above, before the House of Lords was concentrated very largely on that part of it in which the Court of Appeal had refused to draw any distinction between a mistake of law and a mistake of fact so far as the existence of this equitable remedy was concerned, and for this purpose the appellants relied on the well-established rule that in an action at common law for money had and received, money paid under a mistake of fact is, and money paid under a mistake of law is not, recoverable. But the House of Lords refused to accept the proposition that there is any analogy between the equitable claim *in personam* of an underpaid or unpaid creditor or beneficiary, and the cause of action for money had and received at law. And this affirmation of the view taken by the Court of Appeal is important, since the claim of an unpaid or underpaid *cestui que trust* against a third party (i.e., a person other than the trustee) lies at common law

for money had and received; and the common law distinction between mistakes of fact and law, respectively, is therefore operative in a claim by a *cestui que trust* in circumstances which may superficially be very similar to those in the *Diplock* case, while it is wholly irrelevant where the claim is a claim founded on a misapplication of property during administration.

That the principles on which the claim *in personam* in this case succeeded are not applicable to payments made in the execution of a trust has now been made quite clear by Lord Simonds, who said (66 T.L.R. (Pt. 2) 1018): "While in the development of this jurisdiction [the administration of assets of a deceased person] certain principles were established which were common to it and to the comparable jurisdiction in the execution of trusts, I do not find in history or in logic any justification for an argument which denies the possibility of an equitable right in the administration of assets because, it is alleged, no comparable right existed in the execution of trusts. I prefer to look solely at the authorities which are strictly germane to the present question; it is from them alone that the nature and extent of the equity are to be ascertained." And the authorities (of which the principal are *Noel* v. *Robinson* (1686), 1 Vern. 90, and *David* v. *Frowd* (1833), 1 My. & K. 200), when examined, show that the equitable remedy under discussion has been applied in the past only in connection with the recovery of property improperly applied in the course of administration, and not with the recovery of property improperly applied in the execution of a trust.

The effect of these authorities, of course, was apparent to anyone who read the Court of Appeal decision in this case with any care, but I think that some of us then felt that if such a remedy existed in the one case (as the authorities certainly showed it to exist) it might also perhaps be applicable, by analogy, in the other case. I must confess that I did so, and have on occasion advised trustees to beware of the consequences of certain actions on that ground. Now Lord Simonds' opinion shows this view to have been illusory. And, indeed, if we had not been blinded by what first appeared to be the novelty, but now in retrospect may, perhaps, without disrespect, be described as the sheer weight of the Court of Appeal decision in this case, we should have realised that in the application of purely equitable remedies there is little room for analogy. All the remedies which the common law provides have existed since time immemorial, according to the fiction; there they are, *in gremio judicis*, waiting to be brought out when the need arises, as the doctrine of common employment, lately put to rest by statute, was brought out by Lord Abinger in 1837. The history of equity is quite different. The first application of some novel doctrine in equity can often be traced to some innovating Lord Chancellor or Master of the Rolls, and no mystery surrounds its birth; the innovation is acknowledged at the time and subsequently as a fact, and not glossed over by a fiction. But taking it by and large equity has ceased to expand, and although some slight extensions of established rules to cover a case not materially different from those in the books is not unknown, the extension of a doctrine such as that which supported the claims of the plaintiffs *in personam* in the *Diplock* case, a doctrine rooted in the law relating to the administration of estates, to enable a *cestui que trust* to recover misapplied funds from another who had received them from the trustee, would seem to be too bold an innovation for twentieth-century equity to embark on.

It can be taken, then, that this part of the *Diplock* decision is inapplicable to trusts. The other limb of the decision, which enabled the plaintiffs to trace their property into the hands of some of the defendants, is of course part of the law of trusts, and any remedy *in rem* apart, an action for money had and received, as is well known, is open to a *cestui que trust* for the recovery of trust property from another in suitable circumstances. From a practical point of view this last remedy is, of course, in many respects, similar to the remedy *in personam* of a beneficiary or creditor interested in an estate but, the distinction between a mistake of fact and of law apart, there are two differences between the two remedies of some considerable importance. The common law action for money had and received is still dependent, as is the equitable remedy *in personam*, on the plaintiff first bringing an action against the person primarily responsible for the improper payment or application of property on which the plaintiff's complaint rests. And the limitation period applicable to an action for money had and received against any person not standing in any fiduciary relationship to the plaintiff (e.g., an overpaid fellow-beneficiary) is six years, whereas the period applicable to a claim *in personam* on what may be called the *Diplock* principle is twelve, under s. 20 of the Limitation Act, 1939. These are important practical distinctions to which the House of Lords' decision in this last phase of the *Diplock* litigation has acted as a pointer.

"A B C"

Landlord and Tenant Notebook

UNLIGHTED STAIRCASES

CASES in which attempts have been made to fix landlords of blocks of flats with responsibility for accidents occurring on "common" staircases all have a way of reading like variations on a theme by the Court of Appeal in *Miller* v. *Hancock* [1893] 2 Q.B. 177 (C.A.) (in so far as that decision was not overruled by *Fairman* v. *Perpetual Investment Building Society* [1923] A.C. 74). But the stress which has recently been laid on the implication of rights in such cases as *Re Webb's Lease; Sandom* v. *Webb* (1950), 94 SOL. J. 704 (see *ibid.*, 738) and *Mint* v. *Good* (1950), 94 SOL. J. 822 (see 95 SOL. J. 57), the willingness of the courts to examine what "must have been" contemplated in order to give "business efficacy" to a tenancy agreement in these cases, and the suggestion made that the *Donoghue* v. *Stevenson* [1932] A.C. 562 principle should be made applicable to the relationship between a landlord and a third party put forward by Denning, L.J., in *Mint* v. *Good*: these events make the recent decision in *Devine* v. *London Housing Society, Ltd.* (1950), 66 T.L.R. (Pt. 2) 1012; 94 Sol. J. 743, more interesting than would otherwise have been the case.

The plaintiff in *Devine* v. *London Housing Society, Ltd.*, was, and apparently had for many years been, the tenant of a seventh floor flat which could be approached partly by lift but as to the rest by staircase only. The tenancy agreement, a weekly one, imposed no express obligations on the defendants her landlords to do anything about means of access; before the war, however, they had lighted the staircase till very late at night; during the war, lighting was reduced to a pin-point outside the door to the lift shaft on each floor; in 1948 they installed an automatic control system by which the lights were to be mechanically switched off at times decided upon, but the system worked erratically,

and sometimes lights were still on and sometimes they were out at midnight. Tenants had complained of insufficient lighting. The plaintiff was injured as a result of stumbling on the staircase leading to her floor at a time when the lights were out and should, according to her, have been on. *The Times*' report gives the time as "about midnight" and the normal switch-off as being "between 11 p.m. and midnight."

Negligence was pleaded but negatived, and what proved to be more difficult to decide was whether, by necessary implication, the landlords were under the obligation contended for. The claim failed and I think that the actual *ratio decidendi* is to be found in this passage from the judgment of Croom-Johnson, J.: "What I am asked to imply is an obligation to light the staircase at reasonable hours. Who is to be the judge of that? Mr. A comes in at 4 o'clock every morning, either because business or pleasure takes him out at those hours. As I see it, the obligation must be something which is certain. It would vary, in the circumstances, from tenant to tenant. The landlord letting a block of flats would have to consider as regards each individual tenant whether his obligation was to leave lights on all night, or until 4 o'clock, or 12 o'clock, or 10 o'clock. I see the greatest difficulty in implying any such obligation" (66 T.L.R. (Pt. 2) 1014).

The ground is therefore a narrow one, and the decision might perhaps be contrasted with that of the House of Lords in the recent case of *Paris* v. *Stepney Borough Council* (1950), 94 Sol. J. 837, in which it was held that whether reasonable precautions had been taken by an employer to ensure the safety of a workman would depend, *inter alia*, on the idiosyncrasy of an individual workman which was known to the employer.

But as regards the law relating to necessary implication in such cases, the learned judge, who preferred to regard the question as one of implied easement rather than as one of implied contract, referred to a number of authorities dealing with kindred situations. *Miller* v. *Hancock*, *supra*, was a case of a caller (on business) at an office being injured by falling down the stairs, the immediate cause being the defective condition of one of them; the Court of Appeal decided in his favour substantially on grounds which would be reconcilable with the *dicta* of Denning, L.J., in *Mint* v. *Good*, *supra*: there was a duty owed to everyone who might be expected to use the stairs, and while a person in enjoyment of an easement was *prima facie* bound to do necessary repairs himself, the grantor might bind himself to do them, and in this case had impliedly undertaken to do them. In *Fairman* v. *Perpetual Investment Building Society*, *supra*, the scope of this authority was cut down, it being decided that there was no higher duty to third parties than that of not exposing them to concealed danger. The plaintiff in *Devine* v. *London Housing Society, Ltd.*, was the defendants' tenant; but the accident was not due to disrepair. In *Huggett* v. *Miers* [1908] 2 K.B. 278 (C.A.), a clerk employed by the tenant of one of a block of offices fell and was injured when leaving the premises after dark; but it appeared that any lighting that was done was done by tenants, and it was held that the duty recognised in *Miller* v. *Hancock* extended to the repair and condition of the material structure only. The last-named was again distinguished in *Dobson* v. *Horsley*; the child of a tenant was injured owing to a railing being missing from steps leading to the house in which the tenant occupied one room; it was held that while in *Miller* v. *Hancock* there was an implied obligation to maintain a proper staircase and the plaintiff had not been bound to anticipate the defect, there was nothing from which to imply a duty to provide a railing in the case before the court. The last of the group to be considered by Croom-Johnson, J., was *Dunster* v. *Hollis*, in which a tenant succeeded in recovering damages for injuries due to a defective stair, Lush, J., having found that the defendant landlord had failed in a duty to keep the stairs reasonably safe. The judgment was an exhaustive one, but appears to approach the question mainly from the viewpoint of negligence or not; there is little or no examination of the basis or nature of the duty. In *Devine* v. *London Housing Society, Ltd.*, Croom-Johnson, J., distinguished it in that it dealt with repair and not with lighting.

Two useful, possibly provocative, points were made on the matter of necessary implication. Citing some cases in which rent tribunals have been reproved for finding obligations which were not there, the learned judge said that *R.* v. *Paddington, etc., Rent Tribunal, ex parte Bedrock Investments, Ltd.* [1947] K.B. 984 emphasised the essential requirement that the court should have no doubt *what* covenant or undertaking they ought to write into the agreement. Croom-Johnson, J., did not consider the case of great assistance, and this may have been due to the fact that it concerned an alleged obligation to supply hot water to bathrooms; Lord Goddard, C.J., observed that there was no such obligation any more than there was an obligation on tenants to take baths. The analogy, if any, is indeed remote; no question of access to demised premises was involved, and Croom-Johnson, J., had himself decided to approach the issue from the viewpoint of the law relating to easements. On the actual decision, one may perhaps ask whether the suggested implication might not be one obliging the landlords to light the staircase at such times as tenants of the class likely to take such flats would be likely to use it?

The other point concerns materials for implications. The learned judge resolutely refused to imply an obligation from the fact that the landlords had in fact lighted the staircases. Since then, *Mint* v. *Good*, *supra*, has left us in some doubt whether practice can, in the opinion of the Court of Appeal, be sufficient to justify the finding of an obligation. And, while Croom-Johnson, J.'s decision is not at variance with a number of recent authorities—such as *J. F. Perrott & Co., Ltd.* v. *Cohen* (1950), 94 SOL. J. 759 (C.A.) (see *ibid.*, 816), and the cases cited in *Combe* v. *Combe* (1950), 95 Sol. J. 30—it is well to recognise that in those cases courts have been manifesting a disposition to construe representations and other conduct as binding promises more readily than they used to.

R. B.

PRACTICAL CONVEYANCING—XXVII

TENANTS WHO DISAPPEAR

ARISING out of the recent discussion in these notes of the service of notices to quit on personal representatives, a reader has asked what should be done when a tenant disappears and ceases to pay rent. This sometimes happens, for example, in the case of weekly tenancies of small houses, and it is not easy to advise the landlord.

No doubt in these cases a court would be ready to find that there had been an implied surrender of the tenancy, but unless the keys were handed over there would normally be no change of possession on the strength of which a surrender could be alleged. If the landlord took the law into his own hands and entered he might find that the tenant would soon return and claim that he was still entitled to possession. (In the case of a small dwelling-house it is assumed that the tenancy is contractual; if the tenant held merely a statutory tenancy under the Rent Restrictions Acts his right to possession may

cease without service of a notice if he abandons the property.)

There is a statutory remedy open to the landlord, but it is not a very good one. By the Distress for Rent Act, 1737, s. 16 (as amended by the Deserted Tenements Act, 1817), if a tenant at a rack rent is in arrear for half a year's rent and he deserts the premises and leaves them uncultivated or unoccupied, with no sufficient distress on them, the landlord may request two justices to view the premises. The justices will fix a notice stating that they will view the premises again after the expiration of fourteen days and if, on the second view, the tenant does not appear and offer the rent in arrear and there is no sufficient distress, the justices may put the landlord into possession and the lease becomes void.

It seems, therefore, that the first approach is to inquire whether there are any distrainable goods on the premises. If there are, the landlord can proceed to distrain for arrears of rent, but he may find an immediate difficulty in doing this. Although the right to distrain involves the right to enter, the distrainor may not break open an outer door. On the other hand, he may lift the latch of an outer door which is unlocked, or he may enter through an open window; he may open it further if it is already partially open, but he may not open a closed but unfastened window. Consequently, where there are sufficient distrainable goods he may be unable to enter in order to distrain but, nevertheless, he may be unable to use the procedure of justices' view to regain possession.

Where a lease is made for a fixed term it is usual to include a proviso for re-entry on non-payment of rent. In such a case, although there may be some difficulty in commencing proceedings against an absent tenant, it will usually be possible to put an end to the lease reasonably quickly. But in the case of a periodic tenancy the only way in which the tenancy can be ended is by a notice to quit. The landlord's problem is, therefore, how to serve the notice so that the tenancy expires, and it is not until he has succeeded in bringing the tenancy to an end that he can consider the enforcement of his right to possession.

A notice to quit need not be served personally upon the tenant; delivery to the wife or servant of the tenant raises a presumption that it has reached him. But a notice left at the tenant's house is not effectual unless it can be proved that it came to the tenant's hands in time. "If the tenant has disappeared, service becomes impossible unless the lease makes special provision for such a case, as by authorising service of the notice on the premises or at the lessee's last known address" (Hill and Redman's Law of Landlord and Tenant, 10th ed., p. 452).

The conclusion seems to be that landlords letting premises on periodic tenancies should provide by a term in the agreement (which could often be imposed by a printed condition on a rent book) that a notice will be validly served if addressed to the tenant and sent by post to the demised premises. The proper service of a notice to quit is so often a matter of doubt that the writer is surprised that some such term is not commonly adopted.

J. G. S.

HERE AND THERE

DRAMATIC CRITICISM ON LAW

It has long seemed to me that the London theatres and cinemas neglect quite an interesting field of publicity in not inviting dramatic and film criticisms from the legal periodicals. No doubt at first sight, as he turned over page after page of the Newspaper Press Directory, a bewildered manager might find it hard to distinguish their claims from those of, say, the *Psychic News*, the *British Philatelist*, the *Lancet* or the *Bio-Chemical Journal*. But there really is a distinction. One can leave aside the fact that the legal journals all have a flavour of being something more than mere technical organs. One can pass over likewise the incontestable kinship between the dramatic art and the proceedings in the public courts of justice, both being, each in its own idiom, despite occasional judicial protests to the contrary, branches of the great industry of public entertainment. What may be more to the point is the extraordinary number of plays and films that have a direct legal interest in that one of the characters represents, or is supposed to represent, a lawyer. It is not often that a dramatic caricature keeps such hilarious contact with reality as the solicitor organising the divorce case in "Home and Beauty," by Somerset Maugham—but then, the brother of a Lord Chancellor ought to know. Judge Praga and the advocate Spina in "The Mask and the Face" at the Arts Theatre not long ago were much in the same class and doubtless, in the Italian idiom of the play, no further from reality.

RECREATION FOR LAWYERS

Now, lawyers as a class are remarkably fond of a legal flavour to their entertainment and an assurance that they would find it at this theatre or that would act as a powerful magnet to draw them forth of an evening. I have seen a learned judge recall only vaguely and hesitantly and with much prompting that he had been taken by his womenfolk to see "Ring Round the Moon" within the last few months, while he could recall, across the gap of a dozen years, every detail of the plot of Edward Wooll's "Libel," consisting entirely of a trial scene at the Law Courts. Yes, I'm sure that managers, when they have legal goods in stock, would find it quite good business to put them in the legal shop window. In further illustration of what I mean, take the current programme at the Curzon Cinema, skilfully blended as if deliberately to appeal in equal measure to Old Bailey advocates and Lincoln's Inn conveyancers. In a French version of Ben Jonson's outrageously gravity-removing "Volpone" there is one of the funniest trial scenes within my recollection, opening with an amply justified charge of attempted rape and finishing up (thanks to a defence which no student of the forensic art can afford to miss) with the arrest of the prosecutor for perjury and contempt of court after all his witnesses, including the lady, have gone back on their proofs. After that uproariously wicked entertainment Lincoln's Inn can settle down quietly to "Jofroi," a charming little peasant comedy from Provence about the sale of an orchard, and if there is a conveyancer anywhere who is not amused at the completion scene in the lawyer's office I'll be very much surprised.

DRAMA IN THE COURTS

There was a time when you could easily line a good-sized chest of drawers with one issue of your daily paper, and when a guilty abundance of diet produced a high degree of vitality in the greater part of the population. Then the dramatic value of the courts of justice was exceptionally high. Things were always happening there and there was ample room in the Press to give full value to all of them. It would have been in no way surprising if the dramatic critics had taken a turn of duty in the public gallery. Tip-up seats and programmes seemed an almost foreseeable development. The "eminent K.C.," that manifestation of the power of Press publicity, was a national figure, a star performer commanding remuneration comparable to that of a film star. When the leading men of this now, alas, vanishing species were on the bill, nothing but the self-denying ordinances of professional etiquette seemed to bar the possibility of their names in coloured lights flashing over the Strand or "stills" from their triumphant appearances being exhibited in the Central Hall. The judges, too, were in high esteem but rather as players of

"character parts" in which they never failed to give the robust renderings expected of accomplished performers. The possibilities of dramatic criticism in comparing plot with plot and one performance with another were infinite. Nowadays, they are far more restricted and, rather confusingly, they turn up in the most unexpected places. No one can doubt that the show of last month was the case of "The Doctor's Dilemma" in—of all places—the Chancery Division. The performance of the entire cast gripped the audience from start to finish. The scene in which several of the leading characters discussed and sought to define "The Look"—the look in a woman's eye—touched a very high level of dramatic excellence. An older memory—it must be over a year ago, now—is from the Admiralty Division, where the cross-examination of the master of a French vessel involved in collision revealed him (to quote the cross-examiner) as "an atomic bomb of speech." Each question produced a verbal eruption which neither court nor counsel nor interpreter could control (rather like the voluble foreign plaintiff in the "Forensic Fable"). The learned leader who had to deal with him afterwards remarked that he only kept his temper by remembering that the letters "K.C." stood for "Keep Calm."

RICHARD ROE.

BOOKS RECEIVED

Gale on Easements. Twelfth Edition. By D. H. McMULLEN, M.A., of Lincoln's Inn, Barrister-at-Law. 1950. pp. xxxiv and (with Index) 589. London: Sweet & Maxwell, Ltd. £3 10s. net.

A Text-Book of the Law of Tort. Fifth Edition. By Sir P. H. WINFIELD, K.C., F.B.A., LL.D. (Cantab.), of the Inner Temple, Honorary Bencher and Barrister-at-Law. 1950. pp. xxxiv and (with Index) 693. London: Sweet and Maxwell, Ltd. 40s. net.

The Public Utilities Street Works Act, 1950. By HAROLD PARRISH, LL.B., Barrister-at-Law. 1950. pp. v and (with Index) 78. London: Sweet & Maxwell, Ltd., Stevens & Sons, W. Green & Son. 8s. 6d. net.

Paterson's Licensing Acts with Forms. By F. MORTON SMITH, B.A., Solicitor, Clerk to the Justices for the City and County of Newcastle-upon-Tyne. Fifty-Ninth Edition. 1951. pp. cxxiv and (with Index) 1886. London: Butterworth & Co. (Publishers), Ltd. 47s. 6d. net.

Batt's Law of Master and Servant. Fourth Edition. By J. CROSSLEY VAINES, LL.M., of Gray's Inn and the Northern Circuit, Barrister-at-Law, a Lecturer in Law in the University of Liverpool. 1950. pp. xxxvi and (with Index) 520. London: Sir Isaac Pitman and Sons, Ltd. 30s. net.

Clerk and Lindsell on the Law of Torts. Third (Cumulative) Supplement to the Tenth Edition. By BARRY CHEDLOW, of the Middle Temple and Midland Circuit, Barrister-at-Law. 1950. London: Sweet & Maxwell, Ltd. 4s. net.

The British Police. By J. M. HART, M.A. 1951. pp. viii and (with Index) 192. London: George Allen & Unwin, Ltd. 12s. 6d. net.

Animals and the Law. "This is the Law" series. By T. G. FIELD-FISHER, M.A. (Cantab.), of the Middle Temple, Barrister-at-Law. 1950. pp. viii and (with Index) 104. London: Stevens and Sons, Ltd. 4s. net.

The International Law Quarterly. Vol. 4, Number 1. Editor: 1950. pp. 158. London: Stevens & Sons, Ltd. 10s. net.

Buying and Selling a House. "This is the Law" series. By M. B. EVANS, M.B.E., F.R.I.C.S., F.A.I., M.Inst.R.A. 1950. pp. viii and (with Index) 163. London: Stevens & Sons, Ltd. 6s. 6d. net.

Nathan's Equity through the Cases. Second Edition. By O. R. MARSHALL, M.A. (Cantab.), Ph.D. (Lond.), of the Inner Temple, Barrister-at-Law. 1951. pp. lx and (with Index) 528. London: Stevens & Sons, Ltd. 35s. net.

Jackson and Gosset's Investigation of Title. Sixth Edition. By E. H. Bodkin, B.A., of Lincoln's Inn, Barrister-at-Law. 1950. pp. lxiv and (with Index) 490. London: Stevens & Sons, Ltd. £2 10s. net.

Trade Union Law. By N. A. CITRINE, LL.B. (Lond.), Solicitor of the Supreme Court (Hons.), Legal Adviser to the Trades Union Congress. With a Foreword by The Right Hon. LORD JOWITT, Lord High Chancellor, and an Introduction by The Right Hon. Sir HENRY SLESSER, Kt., P.C. 1950. pp. xliv and (with Index) 700. London: Stevens & Sons, Ltd. 45s. net.

Russell on Crime. A Treatise on Felonies and Misdemeanours. Tenth Edition. By J. W. C. TURNER, M.C., M.A., LL.B., of the Middle Temple, Barrister-at-Law, Fellow of Trinity Hall, Cambridge. 1950. Volumes 1 and 2, pp. cxii and (with Index) 1961. London: Stevens & Sons, Ltd. £10 10s. net.

Soper's Arbitrations and Awards. Seventh Edition and Supplement. By D. M. LAWRANCE, B.Sc. (Lond.), F.R.I.C.S., F.A.I., F.I. Arb., of Gray's Inn, Barrister-at-Law. 1950. pp. xiv and (with Index) 224. London: The Estates Gazette, Ltd. 25s. net.

British Nationality including Citizenship of the United Kingdom and Colonies and the Status of Aliens. By C. PARRY, M.A., LL.B. (Cantab.), of Gray's Inn and the South-Eastern Circuit, Barrister-at-Law. 1951. pp. xix and (with Index) 216. London: Stevens & Sons, Ltd. 30s. net.

OBITUARY

MR. J. BATEMAN

Mr. John Bateman, solicitor, of Liverpool, died recently, aged 83. He retired in 1920.

MR. J. S. HINCKS

Mr. John Steer Hincks, solicitor, has died at Paignton, aged 89.

MR. W. E. KERSEY

Mr. William Edward Kersey, solicitor, of Ipswich and Felixstowe, died on 26th January, aged 91. He was admitted in 1881.

MR. A. W. LIPSHAM

Mr. Alfred Watts Lipsham, of Petts Wood, who had been on the staff of Messrs. Devonshire & Co., of Broad Street Avenue, Blomfield Street, London, E.C.2, for fifty-seven years, died on 22nd January.

MR. B. H. HOWLETT

Mr. Bernard Hamilton Howlett, solicitor, of Esher, died recently, aged 40. He was admitted in 1933.

MR. A. H. McBEAN

Mr. Alexander Hamilton McBean, retired solicitor, formerly of Lincoln's Inn Fields, died on 30th December, 1950, aged 73. He was admitted in 1900.

MR. D. E. MICHAELSON

Mr. Douglas Edward Michaelson, solicitor, of Eastcheap, London, E.C.3, died on 21st January, aged 47. He was admitted in 1928.

MR. J. A. D. MILNE

Mr. John Archibald Douglas Milne, O.B.E., formerly Town Clerk of Shoreditch, died on 23rd January.

MR. A. B. RICHARDSON

Mr. Alfred Booth Richardson, retired solicitor, of Sheffield, has died at the age of 81. Admitted in 1892, he retired in 1946.

MR. J. F. ROPER

Mr. John Farwell Roper, solicitor, formerly of Clement's Inn, died on 21st January. He was admitted in 1911.

THE LAW SOCIETY

SPECIAL GENERAL MEETING

A SPECIAL GENERAL MEETING of members of The Law Society was held at the Society's Hall, Chancery Lane, W.C.2, on Friday, 26th January, 1951, the President, Sir LEONARD HOLMES, being in the chair.

Opening the proceedings, the PRESIDENT said: Ladies and Gentlemen,—There being no motion of which notice has been given, the only business of the meeting to-day is to receive a report of the progress made by the Society during the first half of my term of office as President.

We on the Council have suffered a great loss in the death of the immediate Past President, Sir Nevil Smart, who died suddenly on the 15th December last. Although, as many of you know, he had suffered for some eighteen months from increasingly severe heart attacks, he had not allowed that fact to prevent him discharging his responsibilities as President, and since July last he had returned to his office work and was continuing to serve on various committees here and, indeed, he was sitting as a member of the Disciplinary Committee on the day before his death. He was a man of very clear mind and keen perception, and his great understanding of other men ensured him both the friendship and the respect of everybody who knew him—and their number was legion. The Society has indeed suffered a great loss.

I am sorry also to tell you that I have had news this morning of the death of Sir Stanley Pott, who was President in 1942.

I have also to report with regret that Mr. Arthur Smith, of Birmingham, who had been an extraordinary member of the Council since 1938, felt that he should retire and make room for a younger man in view of his advancing years and pressure of business on him in his office. We are very sorry indeed that we shall lose his services on the Council, but glad to know that he has agreed to remain on as a co-opted member of the Legal Education Committee, and also very glad to welcome Mr. John Henry Squire Addison, of Walsall, as his successor.

And now, ladies and gentlemen, with regard to the work of the Society: I propose to give you a short account of what we have been doing in some of the most important matters with which we have been concerned, and before I close I shall ask the representatives of the Press who are present to withdraw, so that we may discuss more freely a domestic matter of some importance.

RETIREMENT BENEFITS

From the point of view of the profession, by far the most important subject with which we have been concerned is that of retirement benefits. The Special Committee, of which Sir Edwin Herbert is Chairman, has been preparing the evidence to be tendered on behalf of the profession to the Departmental Committee of which Mr. Millard Tucker, K.C., is Chairman, and that evidence will probably be ready for submission to the committee in the course of the next week or two.

We have held discussions with representatives of the Law Society of Scotland on the form of their proposed evidence, and we have also been discussing the subject with representatives of various professional bodies in England, namely, accountants, surveyors, engineers, architects, and so on, as the subject is one of particular importance to the professions and it is especially on professional men that the greatest hardships arising from the present situation fall. We realise that to a large extent all self-employed persons suffer an injustice from the present incidence of taxation as compared with those who are in employment with superannuation benefits, but many self-employed persons, such as those engaged in trade, at least if successful, accumulate physical assets such as stock, buildings, plant and machinery, upon which money can be raised, and if further capital is required it can be obtained by forming their businesses into limited companies by the issue of ordinary and preference shares. None of these expedients, however, is open to a solicitor, who cannot take into partnership anyone except another solicitor and cannot form his business into a company. Moreover, unless he has private means, which is becoming increasingly rare, he is wholly dependent on his profits for providing the necessary capital for running the business and for affording him financial support on his retirement. All these points will be brought out in our evidence and we have, as you are aware, invited all members to express any views they may wish to give us for inclusion in that evidence, and we have sent a similar invitation to each of the Provincial Law Societies and the City of London Solicitors' Company.

SUPREME COURT COMMITTEE ON PRACTICE AND PROCEDURE

Another Special Committee has continued to prepare and tender evidence on behalf of the Society before the Supreme Court Committee on Practice and Procedure under the Chairmanship of the Master of the Rolls. Four further memoranda of evidence have been submitted since July, dealing respectively with the limitation of the number of appeals, procedure in and the organisation of the Court of Appeal, distribution of work between the various Divisions of the High Court, and times for appeals. The number of memoranda of evidence, therefore, which we have submitted to the Evershed Committee is now seventeen, quite apart from which oral evidence has been given before three Working Parties since the last Annual General Meeting.

We have also submitted evidence to two other Departmental Committees—those on Intestacy and on Charities.

INTESTACY

A memorandum has been submitted to the Departmental Committee on Intestacy under the Chairmanship of Lord Morton of Henryton, who has been appointed by the Lord Chancellor to consider in particular the rights of a surviving spouse in the residuary estate of an intestate. The Council have for some time both held and expressed the view that the rights of a surviving spouse on intestacy have become quite inadequate and the Lord Chancellor was approached with regard to this matter in 1948, when questions were also raised in Parliament by solicitor members of the House of Commons. Apart from the obvious fact that there has been a depreciation in the value of the £, there is the particular hardship that the sum of £1,000 in respect of which the widow has a first charge is now wholly insufficient in most instances to enable her to live in the house in which she has resided with her husband. We have recommended that, where there is no issue, the widow or widower should be entitled absolutely to the whole estate whatever the amount; and that where there is issue the widow or widower should be entitled to the personal chattels absolutely and to the net sum of £5,000 as a first charge on the estate. We have, of course, also made recommendations as to what should happen to the rest of the estate where there is issue, but the most important point is that the sum of £5,000 will enable the widow to have the house in which she and her husband lived appropriated to her against part of this sum.

CHARITIES

The other Departmental Committee to which we have given evidence is that over which Lord Nathan presides and which is considering the question of Charities. To that committee we have also given oral evidence. Perhaps one of the more interesting of our suggestions was that which was intended to overcome the difficulty that the founder of a proposed charity cannot at present obtain any decision in advance as to whether the objects will be treated as charitable. Our suggestion is that to meet this need it should be possible to serve the Charity Commissioners with a notice of the proposed charitable objects and a draft of the proposed trust instrument. The Charity Commissioners would then notify the Commissioners of Inland Revenue and if both agreed that the objects were charitable the trust instrument would then be registered and that particular charity would have attained a definite charitable status for all purposes. In the event of disagreement, our suggestion was that there should be a right of appeal by the applicant to the Special Commissioners.

LEGAL AID

The next matter of importance upon which you will obviously require some fairly detailed statement from me is the Legal Aid Scheme, which came into force on the 2nd October, 1950, so far as it applies to proceedings started in the Supreme Court. We had succeeded for the most part in securing the necessary premises and equipment and a nucleus of a trained staff, and had appointed the twelve Area and most of the 110 Local Committees by the date fixed for the beginning of the Scheme. Between that date and the 31st December, 20,251 applications for civil aid certificates were made to the various Local Committees. During this same period of three months the committees granted 8,142

applications and refused 1,212 and by the end of the year 3,634 civil aid certificates and 1,213 emergency certificates had been issued. I would like here to say that during the present month the committees have been meeting throughout the country at even more frequent intervals and I am informed that very considerable headway has been made in catching up with the small initial arrears, for, as was expected, there was a flood of applications at the outset of the Scheme. The present signs are that this flood is now subsiding into a steady flow. It is too early yet for us to be able to tell whether our estimates of the number of applications and of the probable cost—or, as we prefer to call them, our "intelligent guesses"—will bear any real relationship to the facts as we shall find them at the end of the year. It does not appear, however, that at present anything has occurred to show that these estimates were hopelessly wrong.

Both the Area and Local Committees, and perhaps particularly the latter, who have had to bear the first brunt, have been working at great pressure and I am glad to say that the administrative machine which we have set up is standing the strain well. In only one Area has the volume of work presented a serious problem, and measures have been taken promptly there to restore the position.

Before the Scheme started the Lord Chancellor made it clear that he fully expected, as did we, that amendments might have to be made to the Act, the Regulations, and the Scheme, in the light of experience, and he assured us that he would do everything in his power to help in obtaining any such amendments as might seem to be necessary. We are in fact proposing to make certain minor amendments in the Scheme, and we understand that the Lord Chancellor will shortly be amending the Regulations to meet difficulties which have arisen in practice. All these amendments, however, are of comparatively minor importance and I need not trouble you with any of them to-day.

Experience has shown that the way in which the Legal Aid (Assessment of Resources) Regulations, 1950, have been applied has caused hardship to two classes of applicants, namely—

(1) those without any or with very little disposable income, but with very small savings; and

(2) some of those with very small salaries or wages and free board and lodging.

The Lord Chancellor and the Attorney-General have consulted the Council upon these difficulties and, as a result, administrative action, which does not involve any amendment of the Regulations, is being taken by the National Assistance Board, which will result in some reduction of the contributions payable by assisted persons in these two classes. The Council have also agreed that Local Committees, when fixing the amount and method of payment of the actual contributions, should incline more favourably towards the applicant.

The Scheme is still in its infancy and it is far too early to pronounce any considered judgment upon it. The Council are, however, encouraged by what has been achieved so far, and particularly by the magnificent response by solicitors and barristers to the invitation to join panels. The fact that 8,900 solicitors and 1,607 barristers are now members of panels shows that substantially the whole of those members of our profession who undertake litigation are supporting the Scheme.

Deferment of Military Service

Next I want to refer to a subject which, coming so soon after the last World War, is a depressing one; namely, the arrangements to be made in the event of a further mobilisation. Last July we set up a Special Committee to consider this matter and we communicated with the Lord Chancellor, to whom we submitted a memorandum showing the peculiar difficulties with which our profession would be faced if, on a sudden general mobilisation, all those eligible for recall to the Forces were to depart forthwith from their offices. I was notified by the Lord Chancellor last week that the Council's memorandum is being most carefully considered by the Minister of Labour and that the Minister intends to consult all professional bodies, including The Law Society, if and when the stage is reached when it seems prudent to bring provisional plans for the use of manpower in war-time nearer to finality, but that this undertaking by the Minister must not be regarded as tying the hands of the Minister if a sudden emergency arises.

That, therefore, is as far, I am afraid, as I am able to take this particular matter.

Extension of Land Registration to Surrey

As you will doubtless have noticed, the Lord Chancellor is proposing to extend to land in Surrey compulsory registration of title. There is nothing new about this proposal, as the preliminary steps were taken before the last war. Under the Land Registration Act, 1925, however, Provincial Law Societies in any area where compulsory registration is to be introduced have a right to raise objections and ask for a local inquiry, subject to certain time limits. Since the original notices were served before the war, two new Provincial Law Societies have come into being in Surrey, namely, the Mid-Surrey and the West Surrey Law Societies, and representations (which I am glad to say have been successful) have therefore been made by the Council to the Lord Chancellor to the effect that the whole procedure should be started *de novo*, thus permitting each of these Societies to demand a public inquiry if in its opinion the circumstances justify it.

International Bar Association

No review of what has been done during the last six months would be complete without some reference, however brief, to the Third International Legal Conference convened under the auspices of the International Bar Association. The Law Society was, with the General Council of the Bar, host on the occasion of this Conference held in London last July, and in fact the Society was responsible for the whole of the administration. The Chairman of the Bar Council and I as President of The Law Society were elected Co-Presidents of the International Bar Association, and we had a very rigorous fortnight's work, but nevertheless a very interesting time at that Conference. A full report has already been published in the *Gazette* and I referred to the Conference in the course of my address to the Annual Conference at Torquay, so that there is no need now for me to say anything further on this subject.

Annual Conference, 1951

Having referred, as I have, to the Annual Conference at Torquay, which was so outstandingly successful, I should like to remind all members that the next Annual Conference will be held from the 25th to the 28th September, 1951, at Harrogate, where we hope to have at least as interesting, if not an even more interesting, programme for those attending; and I am pleased to be able to tell you that the Master of the Rolls has promised to be our guest, and to address the Conference. I very much hope that the numbers of those attending will continue steadily to rise, because the occasions do provide great opportunities for strengthening the bonds which bind the profession together.

Evening Meetings

The next matter, also of a domestic nature, to which I want to refer is the reintroduction of evening meetings of members of the Society in this Hall.

With the object of ascertaining whether there was any real demand among London solicitors for the formation of a London Society or Societies on the lines of the Provincial Law Societies, the Council convened a meeting of London solicitors, when by a very large majority the meeting made it clear that there was no demand for the creation of such Societies. On the other hand, they passed a resolution urging the Council to convene at fixed regular intervals evening meetings of members, when matters of general professional interest and importance could be discussed.

As you will have seen from the *Gazette*, the Council have decided to convene discussion meetings for members to be held here on the evening of the Monday after the second Friday in each month. The meetings are open to all members of the Society, but they will clearly for the most part attract London members and the Council hope that they will provide opportunity for the Council to learn the views of London members on specific points. The first of these meetings is to be held at 5 p.m. on Monday, 12th February. The Council are aware that not all members find 5 p.m. a convenient time for such meetings, and it may be that some members will also think that Monday is a bad day for them. One of the items for discussion at that first meeting is to be the arrangements for future meetings and I suggest that those members who have any suggestions to make or criticisms to offer on this score should take that opportunity to raise them.

[*At this point the President asked the Press to withdraw.*]

NOTES OF CASES

COURT OF APPEAL

HORSE STRAYING ON TO HIGHWAY: ACCIDENT TO CYCLIST

Brock *v.* Richards

Evershed, M.R., Singleton, L.J., and Hodson, J.
19th December, 1950

Appeal from Newquay County Court.

While the plaintiff was riding a motor-cycle in darkness along a main road past a field owned by the defendant, a mare belonging to the latter leapt over the hedge bordering the highway and landed on the plaintiff's machine. He sued the defendant for negligence in failing to keep the mare under proper control. The county court judge awarded him damages in respect of injury to himself and damage to his machine and his clothing. The mare was over five years old, but had never been broken, being kept by the defendant, a farmer, as a pet for his wife. The defendant appealed.

EVERSHED, M.R., said that on the evidence he would have been disposed to hold that the mare, though not vicious or savage, was of a character which could fairly be described as mischievous. But the county court judge had negatived that view, finding that her only unusual characteristic was her propensity to stray. It was impossible to say that there was no evidence to support the judge's finding of fact, and the question was whether on that finding the judgment in favour of the plaintiff could be supported. The general law was laid down in *Searle* v. *Wallbank* [1947] A.C. 341; 91 SOL. J. 83, and in view of that decision he (his lordship) felt that the judgment could not stand. There was no obligation on the owner or occupier of a field adjacent to a highway to maintain a fence on the border of the highway. And, except in cases concerning animals with peculiar characteristics, there was no general duty, founded on the principles stated in *Donoghue* v. *Stevenson* [1932] A.C. 562, on the owner of domestic animals to prevent their straying on to the highway and causing risk of accidents to users of the highway. There was no liability to have a fence; and if there was a fence no liability arose if it was not properly maintained. As a general proposition the owner of animals was under no duty to prevent their straying, even though the straying might take the form of leaping over a hedge on to a highway at a lower level. To create liability the animal must be known to have some peculiarity which would render it dangerous on the highway, and, if there was evidence in the present case to suggest that the mare had such peculiarities, the finding of the county court judge on the facts was wholly to the contrary. The appeal must therefore be allowed.

SINGLETON, L.J., and VAISEY, J., agreed. Appeal allowed.

APPEARANCES: *John Thompson* and *J. Gazdar* (*Fred Hollis*, for *Thrall, Llewellyn & Spooner*, Truro); *Charles Lawson* (*Barlow, Lyde & Gilbert*, for *Stephens & Scown*, Wadebridge).

[Reported by R. C CALBURN, Esq., Barrister-at-Law.]

AGRICULTURAL HOLDING: SEVERANCE OF COTTAGES

Howkins *v.* Jardine

Somervell and Jenkins, L.JJ., and Hodson, J.
20th December, 1950

Appeal from Uttoxeter County Court.

On 1st April, 1935, one Howkins (deceased), whose executor was the present plaintiff landlord, let to the defendant three cottages and seven acres of land at £52 a year. The tenancy was from year to year, subject to a six months' notice to quit. The cottages were on the seven acres, and at that time the tenant lived in one of them. The lease was in substance a lease of an agricultural holding. In 1948 the tenant acquired a neighbouring farm and went to live there. At the date of the present proceedings none of the three cottages was occupied by persons engaged in agriculture. On 23rd March, 1949, twelve months' notice to quit was served in respect of the three cottages and the land in accordance with s. 23 (1) of the Agricultural Holdings Act, 1948. The tenant served a counter-notice under s. 24 (1). The Minister of Agriculture consented to the notice. The Agricultural Land Tribunal allowed the tenant's appeal, the effect of which was that the notice to quit was inoperative. The landlord then started these proceedings, contending that the counter-notice related only to agricultural land and could not relate to the cottages, which were occupied by non-agricultural tenants; alternatively, that the refusal of consent did not relate to the cottages. The court decided for the landlord, and the tenant now appealed.

SOMERVELL, L.J., said that the two issues raised were, first, whether the definition in the Act provided for severance, or whether it was enough that the tenancy was in substance one of agricultural land; and, secondly, whether, if it provided for severance, the severance was on the basis of user of isolated plots or cottages which happened at the moment not to be used for agricultural purposes—cottages occupied as here by non-agricultural workers, or, say, a pasture field, part of a large farm, used as a playing field. Or, if it severed, did it only do so in the case of something which was clearly severable by its nature, such as an inn let with a farm but carried on independently? He had come to the conclusion that the definition did not effect a severance, and that for the Act to apply the tenancy must as a whole be in substance a tenancy of agricultural land. The main structure of the Act, its wording, and what it did not contain, were against the construction put on it by the county court judge. The tenancy in the present case being in substance an agricultural tenancy, and the definition not providing for severance, the appeal succeeded. To treat cottages in what was in substance an agricultural tenancy as coming within, or going out of, the Act according to the occupation of the tenants at the particular moment would be so absurd that only the clearest words to that effect would make a court come to such a conclusion.

JENKINS, L.J., and HODSON, J., agreed. Appeal allowed.

APPEARANCES: *H. Heathcote-Williams*, K.C., and *A. K. Kisch* (*Taylor, Jelf & Co.*, for *Eddowes, Simm and Waldron*, Ashborne); *P. A. Ferns* (*Collyer-Bristow and Co.*, for *Wilkins and Thompson*, Uttoxeter).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

LANDLORD AND TENANT ACT: INTERIM POSSESSION ORDERS

British & Colonial Furniture Co., Ltd. *v.* William McIlroy, Ltd.

Jenkins and Hodson, L.JJ. 25th January, 1951

Appeal from Parker, J., in Chambers.

The appellant tenants were lessees of a shop belonging to the respondent landlords. Their tenancy having been terminated by notice to quit, they applied for a new lease under s. 5 (1) of the Landlord and Tenant Act, 1927. It was found that the application could not be heard before the termination of the tenancy. They accordingly applied for an interim order authorising them to remain in possession under s. 5 (13) of the Act. By consent of the parties the application was heard in Chambers under R.S.C., Ord. 53D, r. 2. The application first came before Slade, J., when solicitors for the landlords offered the court an undertaking not to eject the tenants from the premises before the proceedings on the application for a new lease should be completed. On that undertaking Slade, J., refused an interim order under subs. (13). On reconsideration of their position the tenants were not satisfied with that result, and they again applied to the court for an interim order. No objection was raised to a rehearing, but Parker, J., decided not to vary the decision of Slade, J. The tenants now appealed from that decision.

JENKINS, L.J., said that it was argued for the tenants that, although s. 5 (13) gave the court a discretion, an interim order ought to be made where the tenant was not in default. *Prima facie*, he (his lordship) thought that right. But it was further argued that, even if the landlord gave an undertaking protecting the tenant, it was the duty of the court still to make an order. That, however, he could not accept. It was an everyday occurrence that the court, being satisfied that an undertaking covered a particular case, made no order. It was argued that an interim order should have been made here because, if and when a certain Bill pending before Parliament became law in its present form, it would give an advantage to a tenant who was in occupation under an order over one who was only in occupation by virtue of an undertaking. The court had been invited to examine the provisions of the Bill, but had refused to do so. It would be contrary to all principles of justice if they were to decide cases not by reference to the law as it was, but by reference to the law as it might be in the future if contemplated changes

were made in it. The landlords' undertaking here gave the tenants all the protection to which they were entitled, and the appeal would be dismissed.

HODSON, L.J., agreed. Appeal dismissed.

APPEARANCES: *D. Weitzman* (*Paisner & Co.*); *Rodger Winn* (*Hale, Mackay, Ringrose & Morrow.*)

The appeal *Maurice Lennard & Warde's Hollywood Film Star Shoes, Ltd.* v. *William McIlroy, Ltd.*, raised the same point and was argued at the same time, *C. L. Hawser* (instructed by *Sidney Torrance & Co.*) appearing for the tenants.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHANCERY DIVISION

TOWN AND COUNTRY PLANNING: CHARITABLE PURPOSES ONLY: EXEMPTION FROM DEVELOPMENT CHARGE: SCHOOL PROMOTED AS COMPANY: PREFERENCE SHARES

***In re* Girls' Public Day School Trust, Ltd.; Girls' Public Day School Trust, Ltd. *v.* Minister of Town and Country Planning**

Roxburgh, J. 8th December, 1950

Adjourned summons.

The memorandum of the Girls' Public Day School Trust, Ltd., a company limited by shares, provided, *inter alia*, that the objects of the company were to establish and maintain public day schools for the education of girls, and "to borrow or raise money for the purposes of the trust by mortgage, debentures, debenture stock or otherwise, in such manner as may from time to time be determined with the approval of the Board of Education." On the appointed day the capital of the company was £200,005 divided into 40,000 preference shares of £5 each, and 100 shares, called "new shares," of 1s. each, of which 30,659 of the preference shares and all the new shares had been issued and were fully paid up. The new shares carried no right to dividend, but in a winding-up had the right to repayment of the nominal value of the shares. The preference shares were entitled to dividend up to 4 per cent. per annum, free of income tax, cumulative for two years, but, in fact, the preference shareholders had never claimed, nor received, dividend and for many years past the company had been conducted on charitable and not on commercial lines. The Minister of Town and Country Planning decided that the company, with respect to its land, was not exempt from development charge by virtue of the Town and Country Planning Act, 1947, s. 85 (1), because the land was not held "on charitable trusts or for ecclesiastical or other charitable purposes of any description." The company appealed.

ROXBURGH, J., said that there was no doubt that the main purposes of the trust were charitable—they were educational purposes—but it was conceded by counsel for the company, and there could be no doubt, that in order to bring land within that section, all the purposes for which it was held on the appointed day must be charitable. No doubt the preference shareholders were charitably minded, and the trust had been conducted on charitable lines, but that was not enough to enable the company to succeed on appeal. The position on the appointed day was that there was nothing to prevent the preference shareholders on that day or on any day until they altered the constitution of the trust, from putting the company into liquidation, causing its lands to be sold and causing the liquidator to pay, out of the net profits of the sale, the whole of their capital and two years' arrears of dividend in full. That was one of the purposes for which the land was held on the appointed day; it seemed, therefore, impossible to hold that it was held for charitable purposes only. Consequently, the decision of the Minister was right.

APPEARANCES: *I. J. Lindner* (*Slaughter & May*); *Denys Buckley* (*Treasury Solicitor*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

CHARITABLE PURPOSES: HOSPITAL: ENDOWMENT OF COT: NATIONALISATION

***In re* Ginger, deceased; Roberts *v.* Westminster Bank, Ltd.**

Roxburgh, J. 23rd January, 1951

Adjourned summons.

In May, 1940, Westminster Hospital had a scheme in force under which benefactors who endowed a bed were entitled to name the bed and to nominate patients. In her will made on 30th May, 1940, the testatrix directed her trustees to found a cot in the hospital "in memory of my uncle [G.W.G.] and to use for this purpose the sum of £1,000 free of duty." On 5th July, 1948, when the National Health Service Act, 1946, came into operation, Westminster Hospital could still allocate one of its existing beds to the bequest and affix nearby an appropriate inscription commemorating the person designated in the will, but it could not allow the trustees to nominate patients. The testatrix died on 23rd November, 1948.

ROXBURGH, J., said that the scheme for endowment was somewhat nebulous in character and was silent as to what would happen in a number of circumstances. It did not suggest that, if the endowment of the bed were by will, a testator's executors had the right to nominate patients. What the testatrix had in mind was to give a charitable legacy to that hospital and to commemorate her uncle G.W.G. There was not a word in the bequest about nominating patients, and he (the learned judge) found as a matter of construction that that question did not arise. There was no difficulty in the board of governors of the hospital giving an undertaking which would bring the case precisely within *A.-G.* v. *Belgrave Hospital* [1910] 1 Ch. 73. Direct payment had to be ordered to the board of governors of Westminster Hospital on their undertaking to name in perpetuity a cot in memory of G.W.G., and to invest the sum in trustee securities and apply the income for the purposes of hospital services rendered by them at the building known as the Westminster Hospital or any other building to which the hospital, now carried on there, might be removed.

APPEARANCES: *G. D. Dunbar* (*Oldman, Cornwall & Wood Roberts*); *J. L. Arnold* (*Trollope & Winckworth*); *Nigel Warren* (*Blyth, Dutton, Wright & Bennett*, for *Mennear, Idle & Brackett*, St. Leonards-on-Sea); *Denys Buckley* (*Treasury Solicitor*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

DIVISIONAL COURT

CERTIORARI: EXTENT OF REMEDY

R. *v.* Northumberland Compensation Appeal Tribunal; *ex parte* Shaw

Lord Goddard, C.J., Hilbery and Parker, JJ.

14th December, 1950

Application for an order of certiorari.

The applicant applied for compensation to the respondent tribunal, a tribunal set up under the National Health Service (Transfer of Officers and Compensation) Regulations, 1948, who on 14th June, 1950, made an award whereby he should be paid £33 15s. a year in respect of his accrued pension rights, and £63 6s. 8d. a year between the time when he lost his office till the normal retiring age. The decision of the tribunal was stated in writing. He applied for an order of certiorari for the quashing of that determination on the ground that it was on its face wrong in law. (*Cur. adv. vult.*)

LORD GODDARD, C.J., reading the judgment of the court, gave reasons for holding that the tribunal's decision was wrong in law, and said that the case raised, however, a question of the greatest public importance—whether certiorari would lie to quash that erroneous decision. Clearly the court of King's Bench would always make an order of certiorari for the quashing of an order made by an inferior tribunal without, or in excess of, jurisdiction. It would make the order on those grounds even though the decision in question was by statute exempt from challenge by certiorari in respect of its merits. It was, however, not only on the ground of defect of jurisdiction that certiorari would lie: where the order of an inferior tribunal was a speaking order, that was to say, included a statement of the reasons for the tribunal's decision, the court would, if it found those reasons to be wrong, make an order of certiorari quashing that order on the merits, though it might not, as would an appellate court, substitute the order which it thought ought to have been made. That principle was clearly deducible from *Riceslip Parish* v. *Henden Parish* (1698), 5 Mod. 416; *Walsall Overseers* v. *London and North Western Railway Co.* (1879), 4 App. Cas. 30, at p. 40; and *R.* v. *Nat Bell Liquors, Ltd.* [1922] 2 A.C. 128. He (his lordship) had been a member of the court which decided *Racecourse Betting Control Board* v. *Secretary of State for Air* [1944] Ch. 114. He was of opinion that it ought not to be followed in so far as it laid down that the court in setting aside the award of an

arbitrator for error on its face was exercising an exceptional jurisdiction, the implication being that there was no similar power by way of certiorari in the case of an order made by an inferior tribunal. The question then remained whether the Divisional Court was at liberty to depart from that decision. Where the Court of Appeal had given a decision inconsistent with a decision of the House of Lords, and it appeared that the latter decision was not cited to the Court of Appeal before it gave its decision, the duty of the Divisional Court, which would normally be bound by the Court of Appeal, was to follow the decision of the House of Lords. Accordingly, as neither *Walsall Overseers* v. *London and North Western Railway Co., supra*, nor *R.* v. *Nat Bell Liquors, Ltd., supra*, was cited to the Court of Appeal in *Racecourse Betting Control Board* v. *Secretary of State for Air, supra*, the *dicta* in the last named case which were inconsistent with the other two decisions might be disregarded by the Divisional Court. Application for certiorari granted.

APPEARANCES: *M. Lyell* (*Gwylym T. John*); *Harold Williams*, K.C., and *F. Mattar* (*Adam Burn & Son*, for *Charles S. Perkins*, Gosforth) (for Gosforth Urban District Council); *J. P. Ashworth* (*Solicitor, Ministry of Health*) (for the tribunal).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

DIVISIONAL COURT

PROHIBITED EXPORT OF GOODS: "ANY OTHER PLACE"

Roe *v.* Hemmings and Another

Lord Goddard, C.J., Humphreys and Devlin, JJ.
24th January, 1951

Case stated by the Metropolitan magistrate sitting at Thames Magistrates' Court.

Six informations were preferred against the defendant Hemmings, a night watchman, alleging that on each of six dates respectively, in April and May, 1950, he was the agent of the exporter of prohibited goods—namely, a specified quantity of coffee, which was brought to a place—namely, London, for the purpose of being exported in contravention of the Export of Goods (Control) (Consolidation) Order, 1949, and of s. 3 (1) of the Import, Export and Customs Powers (Defence) Act, 1939. At the same time six informations were preferred against the second defendant, a grocer, alleging that he aided and abetted the night watchman in the commission of the six alleged offences. The night watchman was employed on Swedish vessels in London Docks. On the dates in question the grocer delivered to the night watchman at the latter's residence the quantities of coffee specified in the informations, amounting in all to 666 lb. No money or other consideration passed from the night watchman to the grocer at the time of delivery. The night watchman sold the coffee to Swedish and other seamen, by whom it was in fact exported. After effecting those sales, the night watchman handed the proceeds to the grocer and was allowed a discount on them. Both defendants knew that the coffee was to be sold to seamen who would take it to their ships and either there consume it or take it to Sweden. As a matter of grace the Customs authorities allowed seamen to take on board small quantities of coffee for their own consumption. The magistrate held, without calling on the defendants to give evidence, that the words "or other place" in s. 3 (1) of the Act of 1939 must be construed *ejusdem generis* with the preceding words "to any quay," and that the coffee was not shown to have been brought to a place within the meaning of s. 3 (1). The prosecutor appealed.

LORD GODDARD, C.J., said that the *ejusdem generis* point under s. 3 (1) of the Act of 1939 had been disposed of, in effect, by a case decided in Northern Ireland, *Emerson* v. *Woods* [1942] N.I. 118, and also by *A.-G. for Palestine* v. *Fakhry Ayyas* [1947] A.C. 332. The magistrate here was clearly wrong in his construction of the words "or other place"; but it was only fair to say that those two authorities had not been brought to his attention. Counsel for the defendant grocer had then taken the point that the night watchman's house was not an "other place" within the meaning of s. 3 (1) because it was merely the assembly point for the purchase of coffee and for its sale to seamen in small quantities which the Customs authorities would allow the men to take on board as a matter of grace. But, once it was shown that the persons charged had taken the prohibited goods to some place for sale to someone who intended to take them out of the country, the offence was complete. If this coffee was in fact sold to seamen in such quantities as the Customs authorities, had they discovered them, would have allowed the men to take on board with them, that might be taken into consideration in mitigation of penalty; but it did not alter the offence if the magistrate should come to the conclusion after hearing the defendants that an offence had been committed. The case must go back to the magistrate with an intimation to him that he had reached a wrong decision in law, and that he must hear the case out.

HUMPHREYS and DEVLIN, JJ., agreed. Appeal allowed.

APPEARANCES: *J. P. Ashworth* (*Solicitor of Customs and Excise*); *W. Fearnley-Whittingstall*, K.C., and *Eric Myers* (*Tarlo, Lyons and Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

SURVEY OF THE WEEK

HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time:—

Baptist and Congregational Trusts Bill [H.L.]	[24th January.
Brighton Extension Bill [H.L.]	[24th January.
Bristol Corporation Bill [H.L.]	[24th January.
Canterbury Extension Bill [H.L.]	[24th January.
City of London (Central Criminal Court) Bill [H.L.]	[24th January.
Dartmouth Harbour Bill [H.L.]	[24th January.
Dee and Clwyd River Board Bill [H.L.]	[24th January.
Faversham Navigation Bill [H.L.]	[24th January.
Lancashire County Council (General Powers) Bill [H.L.]	[24th January.
Local Government (Scotland) Bill [H.C.]	[24th January.

Read Second Time:—

Festival of Britain (Sunday Opening) Bill [H.C.]	[23rd January.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time:—

Export Guarantees Bill [H.C.]	[24th January.

To provide that any power which is or was conferred on the Board of Trade by the Export Guarantees Act, 1949, or by the Export Guarantees Acts, 1939 to 1948, to give guarantees to or for the benefit of a person shall be taken to extend and have extended to the giving to him of certain similar undertakings in relation to the business of any company controlled by him, and to the giving of guarantees and undertakings to or for the benefit of any such company.

Read Second Time:—

New Streets Bill [H.C.]	[26th January.
Penicillin (Merchant Ships) Bill [H.L.]	[23rd January.
Sea Fish Industry Bill [H.C.]	[25th January.
Town and Country Planning Bill [H.C.]	[23rd January.

B. DEBATES

Moving the second reading of the **Town and Country Planning Bill,** Mr. DALTON said its aim was to correct two errors in drafting which experience and legal advice had revealed in the 1947 Town and Country Planning Act. The first matter related to planning permission in respect of war-damaged properties. It had been supposed until recently that planning authorities would be able to prevent the restoration of war-damaged buildings to the exact shape in which they had stood previously if such restoration ran counter to the authority's development plans. They had certainly possessed this power under the 1943 Act and it had been the intention that the power should continue under the 1947 Act. Legal advisers had stated, however, that as the 1947 Act now stood planning permission was not needed in order to restore a war-damaged building to its pre-war condition so long as any part of that building remained standing—even though it might be only a few bricks. Clause 1 of the Bill was intended to deal with this anomaly.

The second matter related to the period within which a planning authority could take action against unauthorised development or against a breach of a condition which it might have imposed when authorising the development. Here again the 1947 Act was defective according to the advice tendered by the Law Officers of the Crown. Everyone agreed that there had to be some limit to the period during which an unauthorised developer was left "at risk," i.e., some limit after the expiry of which the law would not be invoked against him. Unfortunately the four-year period provided in the 1947 Act dated, not as was originally stated in the first draft of the Bill, from the date of the breach of planning permission or of any condition attached thereto, but instead from the date of permission being given. It resulted that in certain cases planning conditions were unenforceable under s. 23 of the Act. If, for example, a planning permission was given subject to a condition that a certain use should be discontinued at the end of ten years, the condition became unenforceable, as the law now stood, at the end of four years from the planning permission. The Bill would provide that the period of four years should run from the date of the breach of condition and not from the date of permission itself.

Mr. ASSHETON said the Opposition were disappointed at this mouse of a Bill. They had hoped for something much bigger. In the last twelve months there had been an absolute deluge of constructive memoranda on the 1947 Act, including one from the Council of The Law Society. He felt that the new Minister would not be long in office without coming to the House with a much more serious amending Bill. He gathered that the Bill was to reconcile the Act with the General Development Order, 1950. He would ask the Minister to consider whether he had not cast his net too wide. Was it not possible to distinguish between major and minor works of war damage by specifying a maximum value of work which could be done without permission? Mr. A. J. IRVINE said he found that the effect of the Bill was to make it a development under the town and country planning law to carry out the work of making good war damage affecting only the interior of a building or not materially affecting its external position. Clause 1 did not, as he understood it, attract a development charge because it was a Third Schedule development, but it would in future require planning permission. This change might have considerable importance in practice. Permission was already granted by the General Development Order for the making good of war damage automatically except in those cases in which the Minister made a direction. It therefore seemed that the only relevance of cl. 1 was to those cases where the proposed development lay in an area affected by a direction made by the Minister. What would be the effect on an owner of war-damaged property if permission were refused in such a case? If it were refused and the building was compulsorily acquired, the consequence would be that if war-damage compensation had been assessed on a cost-of-works basis the owner would have his compensation adjusted in accordance with s. 53 of the 1947 Act. If, however, the compensation had been assessed on the basis of a value payment, no provision whatever existed for the adjustment of that compensation. The Bill might thus leave a lacuna in the law of compensation.

Mr. MOLSON asked: was the machinery whereby all war-damage work was exempted from the requirement of planning permission, and then so much of it as seemed to need permission brought under control again by a ministerial direction, working satisfactorily? How were these directions issued—did they apply perhaps only to a geographical area or did they also apply to the amount of expenditure to be made on some particular matter?

Mr. LESLIE HALE said The Law Society had been good enough to run a series of lectures on the Town and Country Planning Act in various parts of the country. He had come to the conclusion that it was not a job for a senior partner to attend those lectures, but had had some difficulty in selecting an appropriate deputy. Finally, one of his partners had volunteered to go, and he said of him with admiration and respect that he went with all the courage and quiet heroism with which the aristocrats went to the tumbrils. He had come back looking a little distressed, and when asked to prepare a brief summary of what he had learned, had said he could compress it into one sentence: that the firm should double its insurance against actions for negligence. This prudent step had been taken. It was a little distressing in a professional office when no one seemed to know the basis of the computation of development values at all. With regard to compensation, it was a serious thing that very often an assessment was made without looking at the land at all and nearly always it was a purely arbitrary figure. On this hit-and-miss basis negotiations started which reduced the figure to 33⅓ or 40 per cent. of the original request. This was not a scientific method of working out what was really a matter of some controversy.

Mr. GEOFFREY HUTCHINSON regretted that other anomalies produced by the 1947 Act were not remedied in the Bill. For instance, there was the question of assessment of compensation for compulsory acquisition. A provision in the 1947 Act had the effect of excluding from compensation any value in respect of vacant possession which the premises might have. Thus a man who was deprived of his home would be unable to acquire another with vacant possession. This was happening all over the country. He hoped the Minister would put this right in the present or some other Bill. Mr. JOHN HAY also regretted that the Minister had not brought forward a more comprehensive amending measure. He was worried about the position under the Bill of a man who wished to do only minor war-damage repairs. He might have to wait a long time before he could receive permission to go ahead. The local authorities took time to bring into operation plans for major development, and in the meantime all bombed buildings should be put to the best possible use. Could not an exemption from planning permission be granted to cases involving less than, say, £250? This would, for example, give the owner power to restore internal decoration which might have been destroyed. Mr. Hay was also concerned about the owner entitled to a cost-of-works payment. He would not get the money from the War Damage Commission unless he did the restoration and he could not carry that out if the local authority, acting under the Bill, refused him permission. It should be provided that in such cases the payments should, at the request of the owner and subject to any necessary safeguards, be transferred to another site or building.

Mr. WATKINSON said he had hoped the Bill would have done something to make conditions easier for the industrialist moving a factory. In industry time was always of the essence of the contract, whereas in town and country planning time meant very little, and he earnestly hoped some means could be found of speeding up the negotiations in these industrial cases.

Mr. HENRY STRAUSS asked whether the Bill would remedy any damage already done due to the lacuna found to exist in the Minister's powers? He thought that by virtue of the combined effect of ss. 19 and 53 of the 1947 Act the position as regards compensation was not that feared by Mr. Irvine and Mr. Hay.

Replying to the debates the Parliamentary Secretary to the Ministry of Town and Country Planning (Mr. LINDGREN) said there were no serious cases in which redevelopment had been prevented owing to the defects which the Bill sought to remedy. The first defect had come to light as a result of a case at Hull in which the lawyer briefed by an owner of property had stumbled across the point about maintenance including complete restoration of the building so long as some part of it was still standing. If some very bright people had got on to the point and had wanted to be awkward, they could have caused a great deal of trouble, but the Government had not shouted about it, nor had the local authorities, nor the legal gentlemen, and no damage had been done up to the moment. With regard to the point on compensation raised by Mr. A. J. Irvine, the position was that where a person was deprived of the reasonable use of his land and buildings through being refused permission to develop, he would have the cost-of-works payment taken into account in the purchase price which he received from the local authority. This did not make the cost-of-works payment mobile, but it did enable a person refused planning permission to have the cost of restoring the building taken into account if he required the local authority, as he could under s. 19, to acquire the premises. Mr. IRVINE said his point was in regard to a value payment, not a cost-of-works payment. Mr. LINDGREN replied that the matter was very important but confusing and he would discuss it with Mr. Irvine later. With regard to the question of exempting minor repairs from the Bill—almost all these had in fact now been carried out, and hence there was no need for making a distinction. If any such cases remained, the position depended on the local authority's plans—they would obviously not sanction work which would have to come down within a few years; otherwise a temporary permission would no doubt be granted. [23rd January.

C. Questions

Mr. John Hay asked why solicitors were not included in the list of signatories who could witness Army Form O.1811, Life and Earnings Certificate, in respect of compensation allowances for injuries received at War Department establishments. Mr. Strachey in reply said that when the form was reprinted he would include solicitors. [23rd January.

Mr. G. P. Stevens asked whether, in view of the hardship caused when a large block of shares was placed upon the market, the Chancellor of the Exchequer would cause estate duties to be levied upon the value of shares as at the date of death or the price realised within twelve months of the date of death, whichever was the less. Mr. Gaitskell said that all property passing on a death fell to be valued for estate duty purposes as at the date of death; he did not think that a one-sided option such as was suggested could be justified. He was aware that the sudden coming into being of a large seller was bound to depress prices but he was also clear that the Inland Revenue took into account the difficulties in reaching a final assessment. [23rd January.

Mr. Chuter Ede said he had decided that prisoners might now, under certain conditions, take general notebooks out of prison on discharge. He certainly hoped that great works of literature which might be composed in prison would not be lost to mankind. The conditions mentioned would be that the prisoner had written nothing in the notebook about his own life, the lives of other prisoners or ex-prisoners, his own offences, or sentences, or those of other prisoners or ex-prisoners, prison conditions, or methods of committing crime. [25th January.

In reply to questions by Mr. Norman Dodds and Lord Winterton on behalf of gypsies, who were said to number 20,000, and to have been hounded by the police and local authorities of late and to be finding very great difficulty in securing sites for their caravans, Mr. Dalton said that the Home Secretary had set on foot, through chief constables, certain inquiries as to the extent of the problem. He was sure the Home Secretary would approach the problem in a very human way. [25th January.

Mr. Dalton said that after consulting the Board of Inland Revenue he was satisfied that the volume of work involved would make it necessary to defer the date for the new valuation lists for rating purposes from 1st April, 1952, to 1st April, 1953. He had informed local authority associations accordingly, and the necessary order would be made in due course. [25th January.

Mr. Marquand said that all the questions authorised by the Population (Statistics) Act, 1938, were asked of persons registering deaths and the answers were readily given except when, as occasionally happened, the answer was not within the person's knowledge. He would consider the practicability of having those questions included in the death certificate so that the persons registering might have advance knowledge of them. [25th January

STATUTORY INSTRUMENTS

Bacon (Control and Prices) (Amendment) Order, 1951. (S.I. 1951 No. 75.)

Exchange Control (Payments) (Austria) Order, 1951. (S.I. 1951 No. 65.)

Exchange Control (Payments) (Greece) Order, 1951. (S.I. 1951 No. 64.)

Fats, Cheese and Tea (Rationing) (Amendment) Order, 1951. (S.I. 1951 No. 74.)

Fire Services (Ranks and Conditions of Service) Regulations, 1951. (S.I. 1951 No. 66.)

Ground Sulphur (Prices) (Amendment No. 4) Order, 1951. (S.I. 1951 No. 85.)

Home-Grown Linseed (Revocation) Order, 1951. (S.I. 1951 No. 76.)

Ice Cream (Heat Treatment, etc.) Amendment Regulations, 1951. (S.I. 1951 No. 67.)

Import Duties (Drawback) (No. 3) Order, 1951. (S.I. 1951 No. 63.)

Kilmarnock Industrial Estate Light Railway Order, 1951. (S.I. 1951 No. 70.)

Knitted Goods (Manufacture and Supply) (Amendment No. 2) Order, 1951. (S.I. 1951 No. 81.)

London Traffic (Control of Speed of Traffic) (Millwall Lock Swing Bridge) Regulations, 1951. (S.I. 1951 No. 98.)

London Traffic (Prescribed Routes) (No. 1) Regulations, 1951. (S.I. 1951 No. 97.)

Money Order Amendment (No. 1) Warrant, 1951. (S.I. 1951 No. 78.)

Newsprint (Prices) (Amendment No. 3) Order, 1951. (S.I. 1951 No. 79.)

Paper (Prices) (No. 2) (Amendment No. 2) Order, 1951. (S.I. 1951 No. 80.)

Paper Bag Wages Council (Great Britain) Wages Regulation (Amendment) Order, 1951. (S.I. 1951 No. 72.)

Paper Box Wages Council (Great Britain) Wages Regulation (Amendment) Order, 1951. (S.I. 1951 No. 73.)

Public Utilities Street Works Act, 1950 (Registration of Declarations) Rules, 1951. (S.I. 1951 No. 69.)

These rules, which came into operation on 1st February, 1951, provide by way of amendment of the Local Land Charges Rules, 1934, for the registration in Pt. IV of the local land charges register of declarations designating streets as prospectively maintainable highways under the Public Utilities Street Works Act, 1950.

Purchase Tax (No. 1) Order, 1951. (S.I. 1951 No. 60.)

As to this order, see p. 50, *ante*.

Shipley Water Order, 1951. (S.I. 1951 No. 71.)

Stopping up of Highways (Derbyshire) (No. 1) Order, 1951. (S.I. 1951 No. 94.)

Stopping up of Highways (London) (No. 2) Order, 1951. (S.I. 1951 No. 96.)

Stopping up of Highways (Rutland) (No. 1) Order, 1951. (S.I. 1951 No. 91.)

Stopping up of Highways (Surrey) (No. 1) Order, 1951. (S.I. 1951 No. 93.)

Stopping up of Highways (West Riding of Yorkshire) (No. 1) Order, 1951. (S.I. 1951 No. 92.)

Utility Apparel (Men's and Boys' Shirts, Underwear and Nightwear) (Manufacture and Supply) (Amendment No. 5) Order, 1951. (S.I. 1951 No. 82.)

West Surrey and Woking Water Order, 1951. (S.I. 1951 No. 95.)

Wild Birds Protection (County of Ayr) Order, 1951. (S.I. 1951 No. 77 (S.3).)

POINTS IN PRACTICE

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 88-90, Chancery Lane, W.C.2, and contain the name and address of the subscriber, and a stamped addressed envelope

Rent Acts—Sub-Letting—Registration by Tenant under Defence Regulation 68CB

Q. I am acting for a client who is the owner of dwelling accommodation. His tenant of part of the accommodation in January, 1947, registered two rooms of the property let to her under Defence Regulation 68CB. The landlord is desirous of obtaining possession of the accommodation occupied by the tenant and I am wondering whether it is possible to claim that as the two rooms have been registered by the tenant under Defence Regulation 68CB they are excluded from the protection of the Rent Acts as between the landlord and the tenant. I think that if the tenant desired to obtain possession from the person to whom she let the two rooms then there would be no difficulty from the tenant's point of view in claiming possession on this ground, but I am not certain if the landlord is in as good a position as against his tenant, and I should be grateful to have your advice on the matter.

A. Although we are not aware of any case on the point we do not consider that it is open to a landlord to contend that the Rent Restrictions Acts do not apply so as to protect a tenant who has registered and sub-let part of the property comprised in his tenancy in accordance with the provisions of Defence Regulation 68CB. The regulation provides that registered accommodation which has been let in accordance with the registered terms and conditions shall not *as respects that letting* be treated as a dwelling-house to which the Rent Acts apply. From this it would seem that, except as regards the sub-letting, the Rent Acts will continue to apply. It will follow from this

that if the tenant registers and sub-lets in accordance with the regulation the whole of the accommodation let to him, his landlord would be able to obtain possession as against the intermediate tenant (Rent, etc., Restrictions (Amendment) Act, 1933, Sched. I, para. (*d*)), and could, therefore, obtain ultimate possession as against the sub-tenant, as the latter would not be protected by the Acts. While we agree that, in the circumstances of the question, the tenant can obtain possession from her sub-tenant on the ground that Defence Regulation 68CB takes the sub-letting out of the Rent Acts, we do not think that the landlord can take advantage of this unless the sub-letting is of the whole of the tenant's interest.

Charitable Trusts—UTILISATION OF CAPITAL

Q. A testatrix by her will gave all the remainder of her estate to her trustees upon trust for sale and conversion and to stand possessed of the net residue upon the trusts following, that is to say (*inter alia*) as to £1,500 (free of duty) in trust for an endowment or fund to be used for the encouragement of original musical composition (including hymn tunes) by means of competitions to be known as "The X Y Z Competitions." Are the trustees, in your opinion, obliged, according to these terms, to invest the whole of these moneys and use only the income in connection with such competitions, or do you think they would be in order in utilising capital to provide, say, for a bursary to enable a successful competitor to study the theory of music or for a grant to enable a competitor to take a course in the study of music?

A. In our opinion "endowment" connotes a permanent preservation of capital and the establishment of a fund or foundation for the object indicated by the testatrix. Section 62 of the Charitable Trusts Act, 1853, refers to ". . . any charity maintained . . . by income arising from any endowment . . ." and "endowment" is defined in s. 66 to mean "all lands, etc., which shall for the time being belong to or be held in trust for any charity or for all or any of the objects or purposes thereof." A distinction is drawn by that Act between the inalienable endowments of charities and the property of those supported by voluntary contributions which are applicable as income. In order to preserve the endowment the trustees should not, in our opinion, apply capital for any of the objects specified without obtaining the authority of the court or of the Charity Commissioners. We do not, however, see any objection to the accumulation of income with a view to providing an adequate sum for any of the purposes mentioned provided the testatrix's original directions are kept in mind.

NOTES AND NEWS

Honours and Appointments

Sir FRANCIS RAYMOND EVERSHED, P.C., the Master of the Rolls, was on 25th January given the freedom of Burton-on-Trent, his birthplace, in recognition of his services to the State and as a token of honour and esteem. He is the son of a solicitor, Mr. Frank Evershed, practising in that town.

Major H. E. R. BOILEAU and Sir CECIL OAKES, C.B.E., have been appointed Chairman and Deputy Chairman respectively of the Courts of Quarter Sessions for the Eastern and Western Divisions of Suffolk.

Mr. J. C. WATT has been appointed Deputy Chairman of Devon Quarter Sessions.

Mr. R. G. ISAACS has been appointed assistant solicitor to the Maidenhead Borough Council.

Mr. J. B. JENKINS has been appointed clerk to the justices of the Bedwellty Division of Monmouthshire.

Mr. W. A. JOHNSON, chief clerk to the Windsor County Court, has been appointed chief clerk to the Southwark County Court. He is succeeded at Windsor by Mr. A. ROBERTSON, who was previously at Aylesbury.

Mr. WILLIAM WILSON, solicitor, of Coventry, has been appointed chairman of Coventry Rent Tribunal.

Miscellaneous

ROYAL COMMISSION ON TAXATION

The Royal Commission on the Taxation of Profits and Income have drawn up the following list of the main heads under which they will be pleased to receive evidence. The list is not necessarily exhaustive. (*a*) *General social and economic questions:* (1) Is the present system of taxation satisfactory, or could it be improved, in relation to: (*a*) incentives, (*b*) risk bearing, (*c*) encouraging savings, (*d*) the control of inflationary or deflationary tendencies, (*e*) the balance of payments, including the inflow and outflow to and from this country of capital for investment, (*f*) its effect on the distribution of personal incomes, (*g*) other economic and social objectives? These questions can be considered in relation to the taxation of: (i) salaries and wages (P.A.Y.E.), (ii) profits of businesses and self-employments, (iii) dividends and other sources of income. (2) Would it be advantageous to link income tax with social security payments and contributions? (3) Is the present treatment of companies for taxation purposes satisfactory or should it be altered? (*b*) *Particular matters:* (4) Is the taxation net drawn too widely or too narrowly in relation to: (*a*) the taxation of United Kingdom residents (companies or individuals) on overseas profits, (*b*) the taxation of non-residents on United Kingdom profits, (*c*) the definition of residence, etc.? (5) (*a*) Are there any kinds of profits or income which are not charged but should be; or which are charged but should not be? In particular—(*b*) Is the present distinction between profits liable to charge and those not liable to charge as being capital profits satisfactory? (6) Is the basis of computing income from property under Scheds. A and B satisfactory? (7) Should the present rules about deductions for outgoings and expenses be altered? (8) Are the provisions for relief in respect of double taxation satisfactory? (9) Should the present system of graduation by means of the exemption limit, personal allowances, reduced rate relief and sur-tax be altered? (10) Should the existing differentiation between earned and unearned income be extended or reduced? (11) Are alterations necessary in the rules governing personal and other allowances? (12) Should the rules about the taxation of husband and wife be altered (*a*) as regards aggregation; (*b*) in any other respect? (13) Should P.A.Y.E. be altered or abolished? (14) Should the principle of deduction at source be extended or restricted? (15) Should the method of assessment to sur-tax be altered, and in particular should it be deducted from salaries? (16) Are any alterations desirable in the system of administration and the functions of the various statutory bodies or persons connected with taxation? (17) Are any changes in the provisions against avoidance and evasion desirable? (18) Is any alteration necessary in the rules governing the taxation treatment of special classes of taxpayers (e.g., public corporations, co-operative societies, charities)?

REIMBURSEMENT OF LOCAL AUTHORITY EXPENDITURE ON BUILDING LICENSING

Ministry of Health circular 6/51 states that, with reference to Pt. II of circular 104/48, under which local authorities receive, as from 1st April, 1947, reimbursement of 75 per cent. of their approved additional expenditure on licensing work undertaken by their officers on behalf of the Minister of Works, the basis for calculating approved expenditure on licensing work will be altered, with effect from 1st April, 1951, to include an apportionment (on a time basis) of the salaries of permanent staff engaged upon this work, other than chief officers of the authority and their deputies.

SOCIETIES

The ROYAL SOCIETY OF ARTS announce that Cantor Lectures on "Training for Industry and the Professions" will be delivered at the Society, John Adam Street, Adelphi, London, W.C.2, on 5th, 12th and 19th February, at 6 p.m.

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